

Bill No. SB 938

Barcode 095260

Proposed Committee Substitute by the Committee on Health Care

1 A bill to be entitled

2 An act relating to patients' right to know

3 about adverse medical incidents; creating s.

4 395.3016, F.S.; requiring that a health care

5 facility provide patients with access to

6 records concerning adverse medical incidents

7 occurring on or after a specified date;

8 prohibiting the facility from disclosing the

9 identity of patients; defining the phrase

10 "adverse medical incident"; providing

11 procedures for making records available to

12 patients; requiring that the Agency for Health

13 Care Administration impose a fine against a

14 facility that fails to provide access to

15 records or that discloses the identity of a

16 patient; amending s. 395.0193, F.S.; providing

17 that an exemption from public-records

18 requirements which is provided for records

19 concerning peer reviews does not apply to those

20 records concerning adverse medical incidents

21 which are subject to disclosure upon the

22 request of a patient; amending s. 395.0197,

23 F.S.; providing that an exemption from

24 public-records requirements which is provided

25 for records collected under an internal

26 risk-management program does not apply to those

27 records concerning adverse incidents which are

28 subject to disclosure upon the request of a

29 patient; amending s. 395.3025, F.S.;

30 authorizing a patient to have access to patient

31 medical records containing information

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1 concerning adverse medical incidents; exempting
2 such records from public-records requirements;
3 amending s. 395.51, F.S.; providing that an
4 exemption from public-records requirements
5 which is provided for hospital records relating
6 to the quality assurance activities of trauma
7 agencies does not apply to those records
8 concerning adverse incidents which are subject
9 to disclosure upon the request of a patient;
10 amending s. 456.057, F.S.; requiring that a
11 records owner release patient records that
12 include information concerning adverse medical
13 incidents upon the request of a patient;
14 creating ss. 458.352, 459.027, and 461.019,
15 F.S.; requiring that physicians, osteopathic
16 physicians, and podiatric physicians provide
17 patients with access to records concerning
18 adverse medical incidents occurring on or after
19 a specified date; prohibiting the physician
20 from disclosing the identity of patients;
21 defining the phrase "adverse medical incident";
22 providing procedures for making records
23 available to patients; requiring that the Board
24 of Medicine, Board of Osteopathic Medicine, or
25 Board of Podiatric Medicine, as applicable,
26 impose a fine against a physician who fails to
27 provide access to records or who discloses the
28 identity of a patient; providing an effective
29 date.

30
31 Be It Enacted by the Legislature of the State of Florida:

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1 Section 1. Section 395.3016, Florida Statutes, is
2 created to read:

3 395.3016 Patients' right to know about adverse medical
4 incidents.--

5 (1) For purposes of implementing s. 25, Art. X of the
6 State Constitution, a patient who has sought, is seeking, is
7 undergoing, or has undergone care or treatment in a health
8 care facility licensed under this chapter has a right to have
9 access to any records made or received in the course of
10 business by the health care facility relating to any adverse
11 medical incident. In providing such access, the facility may
12 not disclose the identity of any patient involved in an
13 incident, and the privacy restrictions imposed by federal law
14 must be maintained. This section applies only to records of an
15 adverse medical incident that occurs on or after November 2,
16 2004.

17 (2) As used in this section, the phrase "adverse
18 medical incident" means medical negligence, intentional
19 misconduct, and any other act, neglect, or default of a health
20 care facility or health care provider as defined in s. 381.026
21 which caused or could have caused injury to or death of a
22 patient, including, but not limited to, those incidents that
23 are required by state or federal law to be reported to any
24 governmental agency or body, and incidents that are reported
25 to or reviewed by any health care facility peer review, risk
26 management, quality assurance, credentials, or similar
27 committee, or any representative of any such committees.

28 (3) In addition to any other procedure for producing
29 such records provided by general law, a facility must make the
30 records available for inspection and copying upon formal or
31 informal request by the patient or a representative of the

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1 patient, provided that current records which have been made
 2 publicly available by publication or on the Internet may be
 3 "provided" by reference to the location at which the records
 4 are publicly available. The records must be made available in
 5 a timely manner without delay for legal review. The records
 6 must be made available at reasonable times of day and days of
 7 the week within the facility's business hours. The exclusive
 8 charge for copies of the records may include sales tax and
 9 actual postage, and, except for nonpaper records that are
 10 subject to a charge not to exceed \$2, may not exceed \$1 per
 11 page. These charges apply to all records that are furnished,
 12 whether directly from the facility or from a copy service
 13 providing these services on behalf of the facility.

14 (4) The agency may levy a fine of up to \$500 for a
 15 nonwillful violation and up to \$1,000 for a willful violation
 16 against a facility that fails to provide access to the records
 17 or to provide copies if requested.

18 (5) The agency may levy a fine of up to \$500 for a
 19 nonwillful violation and up to \$1,000 for a willful violation
 20 against a facility that discloses the identity of a patient
 21 involved in an incident in the provision of records.

22 Section 2. Section 395.0193, Florida Statutes, is
 23 amended to read:

24 395.0193 Licensed facilities; peer review;
 25 disciplinary powers; agency or partnership with physicians.--

26 (1) It is the intent of the Legislature that good
 27 faith participants in the process of investigating and
 28 disciplining physicians pursuant to the state-mandated peer
 29 review process shall, in addition to receiving immunity from
 30 retaliatory tort suits pursuant to s. 456.073(12), be
 31 protected from federal antitrust suits filed under the Sherman

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1 Anti-Trust Act, 15 U.S.C.A. ss. 1 et seq. Such intent is
2 within the public policy of the state to secure the provision
3 of quality medical services to the public.

4 (2) Each licensed facility, as a condition of
5 licensure, shall provide for peer review of physicians who
6 deliver health care services at the facility. Each licensed
7 facility shall develop written, binding procedures by which
8 such peer review shall be conducted. Such procedures shall
9 include:

10 (a) Mechanism for choosing the membership of the body
11 or bodies that conduct peer review.

12 (b) Adoption of rules of order for the peer review
13 process.

14 (c) Fair review of the case with the physician
15 involved.

16 (d) Mechanism to identify and avoid conflict of
17 interest on the part of the peer review panel members.

18 (e) Recording of agendas and minutes which do not
19 contain confidential material, for review by the Division of
20 Health Quality Assurance of the agency.

21 (f) Review, at least annually, of the peer review
22 procedures by the governing board of the licensed facility.

23 (g) Focus of the peer review process on review of
24 professional practices at the facility to reduce morbidity and
25 mortality and to improve patient care.

26 (3) If reasonable belief exists that conduct by a
27 staff member or physician who delivers health care services at
28 the licensed facility may constitute one or more grounds for
29 discipline as provided in this subsection, a peer review panel
30 shall investigate and determine whether grounds for discipline
31 exist with respect to such staff member or physician. The

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1 governing board of any licensed facility, after considering
2 the recommendations of its peer review panel, shall suspend,
3 deny, revoke, or curtail the privileges, or reprimand,
4 counsel, or require education, of any such staff member or
5 physician after a final determination has been made that one
6 or more of the following grounds exist:

- 7 (a) Incompetence.
- 8 (b) Being found to be a habitual user of intoxicants
9 or drugs to the extent that he or she is deemed dangerous to
10 himself, herself, or others.
- 11 (c) Mental or physical impairment which may adversely
12 affect patient care.
- 13 (d) Being found liable by a court of competent
14 jurisdiction for medical negligence or malpractice involving
15 negligent conduct.
- 16 (e) One or more settlements exceeding \$10,000 for
17 medical negligence or malpractice involving negligent conduct
18 by the staff member.
- 19 (f) Medical negligence other than as specified in
20 paragraph (d) or paragraph (e).
- 21 (g) Failure to comply with the policies, procedures,
22 or directives of the risk management program or any quality
23 assurance committees of any licensed facility.

24 (4) Pursuant to ss. 458.337 and 459.016, any
25 disciplinary actions taken under subsection (3) shall be
26 reported in writing to the Division of Health Quality
27 Assurance of the agency within 30 working days after its
28 initial occurrence, regardless of the pendency of appeals to
29 the governing board of the hospital. The notification shall
30 identify the disciplined practitioner, the action taken, and
31 the reason for such action. All final disciplinary actions

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1 taken under subsection (3), if different from those which were
2 reported to the agency within 30 days after the initial
3 occurrence, shall be reported within 10 working days to the
4 Division of Health Quality Assurance of the agency in writing
5 and shall specify the disciplinary action taken and the
6 specific grounds therefor. The division shall review each
7 report and determine whether it potentially involved conduct
8 by the licensee that is subject to disciplinary action, in
9 which case s. 456.073 shall apply. Except for those records of
10 adverse medical incidents which must be released under s. 25,
11 Art. X of the State Constitution and s. 395.3016, the reports
12 are not subject to inspection under s. 119.07(1) even if the
13 division's investigation results in a finding of probable
14 cause.

15 (5) There shall be no monetary liability on the part
16 of, and no cause of action for damages against, any licensed
17 facility, its governing board or governing board members, peer
18 review panel, medical staff, or disciplinary body, or its
19 agents, investigators, witnesses, or employees; a committee of
20 a hospital; or any other person, for any action taken without
21 intentional fraud in carrying out the provisions of this
22 section.

23 (6) For a single incident or series of isolated
24 incidents that are nonwillful violations of the reporting
25 requirements of this section, the agency shall first seek to
26 obtain corrective action by the facility. If correction is not
27 demonstrated within the timeframe established by the agency or
28 if there is a pattern of nonwillful violations of this
29 section, the agency may impose an administrative fine, not to
30 exceed \$5,000 for any violation of the reporting requirements
31 of this section. The administrative fine for repeated

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1 nonwillful violations shall not exceed \$10,000 for any
2 violation. The administrative fine for each intentional and
3 willful violation may not exceed \$25,000 per violation, per
4 day. The fine for an intentional and willful violation of this
5 section may not exceed \$250,000. In determining the amount of
6 fine to be levied, the agency shall be guided by s.

7 395.1065(2)(b).

8 (7) Except for those records of adverse medical
9 incidents which must be released under s. 25, Art. X of the
10 State Constitution and s. 395.3016, the proceedings and
11 records of peer review panels, committees, and governing
12 boards or agent thereof which relate solely to actions taken
13 in carrying out this section are not subject to inspection
14 under s. 119.07(1); and meetings held pursuant to achieving
15 the objectives of such panels, committees, and governing
16 boards are not open to the public under the provisions of
17 chapter 286.

18 (8) The investigations, proceedings, and records of
19 the peer review panel, a committee of a hospital, a
20 disciplinary board, or a governing board, or agent thereof
21 with whom there is a specific written contract for that
22 purpose, as described in this section shall not be subject to
23 discovery or introduction into evidence in any civil or
24 administrative action against a provider of professional
25 health services arising out of the matters which are the
26 subject of evaluation and review by such group or its agent,
27 and a person who was in attendance at a meeting of such group
28 or its agent may not be permitted or required to testify in
29 any such civil or administrative action as to any evidence or
30 other matters produced or presented during the proceedings of
31 such group or its agent or as to any findings,

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1 recommendations, evaluations, opinions, or other actions of
2 such group or its agent or any members thereof. However,
3 information, documents, or records otherwise available from
4 original sources are not to be construed as immune from
5 discovery or use in any such civil or administrative action
6 merely because they were presented during proceedings of such
7 group, and any person who testifies before such group or who
8 is a member of such group may not be prevented from testifying
9 as to matters within his or her knowledge, but such witness
10 may not be asked about his or her testimony before such a
11 group or opinions formed by him or her as a result of such
12 group hearings.

13 (9) (a) If the defendant prevails in an action brought
14 by a staff member or physician who delivers health care
15 services at the licensed facility against any person or entity
16 that initiated, participated in, was a witness in, or
17 conducted any review as authorized by this section, the court
18 shall award reasonable attorney's fees and costs to the
19 defendant.

20 (b) As a condition of any staff member or physician
21 bringing any action against any person or entity that
22 initiated, participated in, was a witness in, or conducted any
23 review as authorized by this section and before any responsive
24 pleading is due, the staff member or physician shall post a
25 bond or other security, as set by the court having
26 jurisdiction of the action, in an amount sufficient to pay the
27 costs and attorney's fees.

28 (10) (a) A hospital's compliance with the requirements
29 of this chapter or s. 766.110(1) may not be the sole basis to
30 establish an agency or partnership relationship between the
31 hospital and physicians who provide services within the

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1 hospital.

2 (b) A hospital may create an agency relationship with
3 a physician by written contract signed by the hospital and:

- 4 1. The physician;
5 2. A health care professional association; or
6 3. A corporate medical group and its employees.

7

8 A written contract is not the exclusive means to establish an
9 agency or partnership relationship between a hospital and any
10 other person described in this paragraph.

11 Section 3. Section 395.0197, Florida Statutes, is
12 amended to read:

13 395.0197 Internal risk management program.--

14 (1) Every licensed facility shall, as a part of its
15 administrative functions, establish an internal risk
16 management program that includes all of the following
17 components:

18 (a) The investigation and analysis of the frequency
19 and causes of general categories and specific types of adverse
20 incidents to patients.

21 (b) The development of appropriate measures to
22 minimize the risk of adverse incidents to patients, including,
23 but not limited to:

24 1. Risk management and risk prevention education and
25 training of all nonphysician personnel as follows:

26 a. Such education and training of all nonphysician
27 personnel as part of their initial orientation; and

28 b. At least 1 hour of such education and training
29 annually for all personnel of the licensed facility working in
30 clinical areas and providing patient care, except those
31 persons licensed as health care practitioners who are required

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1 to complete continuing education coursework pursuant to
2 chapter 456 or the respective practice act.

3 2. A prohibition, except when emergency circumstances
4 require otherwise, against a staff member of the licensed
5 facility attending a patient in the recovery room, unless the
6 staff member is authorized to attend the patient in the
7 recovery room and is in the company of at least one other
8 person. However, a licensed facility is exempt from the
9 two-person requirement if it has:

- 10 a. Live visual observation;
11 b. Electronic observation; or
12 c. Any other reasonable measure taken to ensure
13 patient protection and privacy.

14 3. A prohibition against an unlicensed person from
15 assisting or participating in any surgical procedure unless
16 the facility has authorized the person to do so following a
17 competency assessment, and such assistance or participation is
18 done under the direct and immediate supervision of a licensed
19 physician and is not otherwise an activity that may only be
20 performed by a licensed health care practitioner.

21 4. Development, implementation, and ongoing evaluation
22 of procedures, protocols, and systems to accurately identify
23 patients, planned procedures, and the correct site of the
24 planned procedure so as to minimize the performance of a
25 surgical procedure on the wrong patient, a wrong surgical
26 procedure, a wrong-site surgical procedure, or a surgical
27 procedure otherwise unrelated to the patient's diagnosis or
28 medical condition.

29 (c) The analysis of patient grievances that relate to
30 patient care and the quality of medical services.

31 (d) A system for informing a patient or an individual

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1 identified pursuant to s. 765.401(1) that the patient was the
2 subject of an adverse incident, as defined in subsection (5).
3 Such notice shall be given by an appropriately trained person
4 designated by the licensed facility as soon as practicable to
5 allow the patient an opportunity to minimize damage or injury.

6 (e) The development and implementation of an incident
7 reporting system based upon the affirmative duty of all health
8 care providers and all agents and employees of the licensed
9 health care facility to report adverse incidents to the risk
10 manager, or to his or her designee, within 3 business days
11 after their occurrence.

12 (2) The internal risk management program is the
13 responsibility of the governing board of the health care
14 facility. Each licensed facility shall hire a risk manager,
15 licensed under s. 395.10974, who is responsible for
16 implementation and oversight of such facility's internal risk
17 management program as required by this section. A risk
18 manager must not be made responsible for more than four
19 internal risk management programs in separate licensed
20 facilities, unless the facilities are under one corporate
21 ownership or the risk management programs are in rural
22 hospitals.

23 (3) In addition to the programs mandated by this
24 section, other innovative approaches intended to reduce the
25 frequency and severity of medical malpractice and patient
26 injury claims shall be encouraged and their implementation and
27 operation facilitated. Such additional approaches may include
28 extending internal risk management programs to health care
29 providers' offices and the assuming of provider liability by a
30 licensed health care facility for acts or omissions occurring
31 within the licensed facility. Each licensed facility shall

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1 annually report to the agency and the Department of Health the
2 name and judgments entered against each health care
3 practitioner for which it assumes liability. The agency and
4 Department of Health, in their respective annual reports,
5 shall include statistics that report the number of licensed
6 facilities that assume such liability and the number of health
7 care practitioners, by profession, for whom they assume
8 liability.

9 (4) The agency shall adopt rules governing the
10 establishment of internal risk management programs to meet the
11 needs of individual licensed facilities. Each internal risk
12 management program shall include the use of incident reports
13 to be filed with an individual of responsibility who is
14 competent in risk management techniques in the employ of each
15 licensed facility, such as an insurance coordinator, or who is
16 retained by the licensed facility as a consultant. The
17 individual responsible for the risk management program shall
18 have free access to all medical records of the licensed
19 facility. The incident reports are part of the workpapers of
20 the attorney defending the licensed facility in litigation
21 relating to the licensed facility and are subject to
22 discovery, but are not admissible as evidence in court. A
23 person filing an incident report is not subject to civil suit
24 by virtue of such incident report. As a part of each internal
25 risk management program, the incident reports shall be used to
26 develop categories of incidents which identify problem areas.
27 Once identified, procedures shall be adjusted to correct the
28 problem areas.

29 (5) For purposes of reporting to the agency pursuant
30 to this section, the term "adverse incident" means an event
31 over which health care personnel could exercise control and

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1 which is associated in whole or in part with medical
2 intervention, rather than the condition for which such
3 intervention occurred, and which:

4 (a) Results in one of the following injuries:

5 1. Death;

6 2. Brain or spinal damage;

7 3. Permanent disfigurement;

8 4. Fracture or dislocation of bones or joints;

9 5. A resulting limitation of neurological, physical,
10 or sensory function which continues after discharge from the
11 facility;

12 6. Any condition that required specialized medical
13 attention or surgical intervention resulting from nonemergency
14 medical intervention, other than an emergency medical
15 condition, to which the patient has not given his or her
16 informed consent; or

17 7. Any condition that required the transfer of the
18 patient, within or outside the facility, to a unit providing a
19 more acute level of care due to the adverse incident, rather
20 than the patient's condition prior to the adverse incident;

21 (b) Was the performance of a surgical procedure on the
22 wrong patient, a wrong surgical procedure, a wrong-site
23 surgical procedure, or a surgical procedure otherwise
24 unrelated to the patient's diagnosis or medical condition;

25 (c) Required the surgical repair of damage resulting
26 to a patient from a planned surgical procedure, where the
27 damage was not a recognized specific risk, as disclosed to the
28 patient and documented through the informed-consent process;
29 or

30 (d) Was a procedure to remove unplanned foreign
31 objects remaining from a surgical procedure.

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1 (6) (a) Each licensed facility subject to this section
2 shall submit an annual report to the agency summarizing the
3 incident reports that have been filed in the facility for that
4 year. The report shall include:

5 1. The total number of adverse incidents.

6 2. A listing, by category, of the types of operations,
7 diagnostic or treatment procedures, or other actions causing
8 the injuries, and the number of incidents occurring within
9 each category.

10 3. A listing, by category, of the types of injuries
11 caused and the number of incidents occurring within each
12 category.

13 4. A code number using the health care professional's
14 licensure number and a separate code number identifying all
15 other individuals directly involved in adverse incidents to
16 patients, the relationship of the individual to the licensed
17 facility, and the number of incidents in which each individual
18 has been directly involved. Each licensed facility shall
19 maintain names of the health care professionals and
20 individuals identified by code numbers for purposes of this
21 section.

22 5. A description of all malpractice claims filed
23 against the licensed facility, including the total number of
24 pending and closed claims and the nature of the incident which
25 led to, the persons involved in, and the status and
26 disposition of each claim. Each report shall update status and
27 disposition for all prior reports.

28 (b) The information reported to the agency pursuant to
29 paragraph (a) which relates to persons licensed under chapter
30 458, chapter 459, chapter 461, or chapter 466 shall be
31 reviewed by the agency. The agency shall determine whether

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1 any of the incidents potentially involved conduct by a health
2 care professional who is subject to disciplinary action, in
3 which case the provisions of s. 456.073 shall apply.

4 (c) The report submitted to the agency shall also
5 contain the name and license number of the risk manager of the
6 licensed facility, a copy of its policy and procedures which
7 govern the measures taken by the facility and its risk manager
8 to reduce the risk of injuries and adverse incidents, and the
9 results of such measures. Except for those records of adverse
10 medical incidents which must be released under s. 25, Art. X
11 of the State Constitution and s. 395.3016, the annual report
12 is confidential and is not available to the public pursuant to
13 s. 119.07(1) or any other law providing access to public
14 records. The annual report is not discoverable or admissible
15 in any civil or administrative action, except in disciplinary
16 proceedings by the agency or the appropriate regulatory board.
17 The annual report is not available to the public as part of
18 the record of investigation for and prosecution in
19 disciplinary proceedings made available to the public by the
20 agency or the appropriate regulatory board. However, the
21 agency or the appropriate regulatory board shall make
22 available, upon written request by a health care professional
23 against whom probable cause has been found, any such records
24 which form the basis of the determination of probable cause.

25 (7) Any of the following adverse incidents, whether
26 occurring in the licensed facility or arising from health care
27 prior to admission in the licensed facility, shall be reported
28 by the facility to the agency within 15 calendar days after
29 its occurrence:

30 (a) The death of a patient;

31 (b) Brain or spinal damage to a patient;

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1 (c) The performance of a surgical procedure on the
2 wrong patient;

3 (d) The performance of a wrong-site surgical
4 procedure;

5 (e) The performance of a wrong surgical procedure;

6 (f) The performance of a surgical procedure that is
7 medically unnecessary or otherwise unrelated to the patient's
8 diagnosis or medical condition;

9 (g) The surgical repair of damage resulting to a
10 patient from a planned surgical procedure, where the damage is
11 not a recognized specific risk, as disclosed to the patient
12 and documented through the informed-consent process; or

13 (h) The performance of procedures to remove unplanned
14 foreign objects remaining from a surgical procedure.

15

16 The agency may grant extensions to this reporting requirement
17 for more than 15 days upon justification submitted in writing
18 by the facility administrator to the agency. The agency may
19 require an additional, final report. Except for those records
20 of adverse medical incidents which must be released under s.

21 25, Art. X of the State Constitution and s. 395.3016, these
22 reports shall not be available to the public pursuant to s.
23 119.07(1) or any other law providing access to public records.

24 The records are not, nor be discoverable or admissible in any
25 civil or administrative action, except in disciplinary
26 proceedings by the agency or the appropriate regulatory board,
27 nor shall they be available to the public as part of the
28 record of investigation for and prosecution in disciplinary
29 proceedings made available to the public by the agency or the
30 appropriate regulatory board. However, the agency or the
31 appropriate regulatory board shall make available, upon

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1 written request by a health care professional against whom
2 probable cause has been found, any such records which form the
3 basis of the determination of probable cause. The agency may
4 investigate, as it deems appropriate, any such incident and
5 prescribe measures that must or may be taken in response to
6 the incident. The agency shall review each incident and
7 determine whether it potentially involved conduct by the
8 health care professional who is subject to disciplinary
9 action, in which case the provisions of s. 456.073 shall
10 apply.

11 (8) The agency shall publish on the agency's website,
12 no less than quarterly, a summary and trend analysis of
13 adverse incident reports received pursuant to this section,
14 which shall not include information that would identify the
15 patient, the reporting facility, or the health care
16 practitioners involved. The agency shall publish on the
17 agency's website an annual summary and trend analysis of all
18 adverse incident reports and malpractice claims information
19 provided by facilities in their annual reports, which shall
20 not include information that would identify the patient, the
21 reporting facility, or the practitioners involved. The purpose
22 of the publication of the summary and trend analysis is to
23 promote the rapid dissemination of information relating to
24 adverse incidents and malpractice claims to assist in
25 avoidance of similar incidents and reduce morbidity and
26 mortality.

27 (9) The internal risk manager of each licensed
28 facility shall:

29 (a) Investigate every allegation of sexual misconduct
30 which is made against a member of the facility's personnel who
31 has direct patient contact, when the allegation is that the

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1 sexual misconduct occurred at the facility or on the grounds
2 of the facility.

3 (b) Report every allegation of sexual misconduct to
4 the administrator of the licensed facility.

5 (c) Notify the family or guardian of the victim, if a
6 minor, that an allegation of sexual misconduct has been made
7 and that an investigation is being conducted.

8 (d) Report to the Department of Health every
9 allegation of sexual misconduct, as defined in chapter 456 and
10 the respective practice act, by a licensed health care
11 practitioner that involves a patient.

12 (10) Any witness who witnessed or who possesses actual
13 knowledge of the act that is the basis of an allegation of
14 sexual abuse shall:

15 (a) Notify the local police; and

16 (b) Notify the hospital risk manager and the
17 administrator.

18

19 For purposes of this subsection, "sexual abuse" means acts of
20 a sexual nature committed for the sexual gratification of
21 anyone upon, or in the presence of, a vulnerable adult,
22 without the vulnerable adult's informed consent, or a minor.

23 "Sexual abuse" includes, but is not limited to, the acts
24 defined in s. 794.011(1)(h), fondling, exposure of a
25 vulnerable adult's or minor's sexual organs, or the use of the
26 vulnerable adult or minor to solicit for or engage in
27 prostitution or sexual performance. "Sexual abuse" does not
28 include any act intended for a valid medical purpose or any
29 act which may reasonably be construed to be a normal
30 caregiving action.

31 (11) A person who, with malice or with intent to

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1 discredit or harm a licensed facility or any person, makes a
2 false allegation of sexual misconduct against a member of a
3 licensed facility's personnel is guilty of a misdemeanor of
4 the second degree, punishable as provided in s. 775.082 or s.
5 775.083.

6 (12) In addition to any penalty imposed pursuant to
7 this section, the agency shall require a written plan of
8 correction from the facility. For a single incident or series
9 of isolated incidents that are nonwillful violations of the
10 reporting requirements of this section, the agency shall first
11 seek to obtain corrective action by the facility. If the
12 correction is not demonstrated within the timeframe
13 established by the agency or if there is a pattern of
14 nonwillful violations of this section, the agency may impose
15 an administrative fine, not to exceed \$5,000 for any violation
16 of the reporting requirements of this section. The
17 administrative fine for repeated nonwillful violations shall
18 not exceed \$10,000 for any violation. The administrative fine
19 for each intentional and willful violation may not exceed
20 \$25,000 per violation, per day. The fine for an intentional
21 and willful violation of this section may not exceed \$250,000.
22 In determining the amount of fine to be levied, the agency
23 shall be guided by s. 395.1065(2)(b).

24 (13) The agency shall have access to all licensed
25 facility records necessary to carry out the provisions of this
26 section. Except for those records of adverse medical incidents
27 which must be released under s. 25, Art. X of the State
28 Constitution and s. 395.3016, the records obtained by the
29 agency under subsection (6), subsection (7), or subsection (9)
30 are not available to the public under s. 119.07(1). The
31 records are not, nor shall they be discoverable or admissible

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1 in any civil or administrative action, except in disciplinary
 2 proceedings by the agency or the appropriate regulatory board,
 3 and ~~nor shall~~ records obtained pursuant to s. 456.071 are not
 4 ~~be~~ available to the public as part of the record of
 5 investigation for and prosecution in disciplinary proceedings
 6 made available to the public by the agency or the appropriate
 7 regulatory board. However, the agency or the appropriate
 8 regulatory board shall make available, upon written request by
 9 a health care professional against whom probable cause has
 10 been found, any such records which form the basis of the
 11 determination of probable cause, except that, with respect to
 12 medical review committee records, s. 766.101 controls.

13 (14) The meetings of the committees and governing
 14 board of a licensed facility held solely for the purpose of
 15 achieving the objectives of risk management as provided by
 16 this section shall not be open to the public under the
 17 provisions of chapter 286. The records of such meetings are
 18 confidential and exempt from s. 119.07(1), except as provided
 19 in subsection (13).

20 (15) The agency shall review, as part of its licensure
 21 inspection process, the internal risk management program at
 22 each licensed facility regulated by this section to determine
 23 whether the program meets standards established in statutes
 24 and rules, whether the program is being conducted in a manner
 25 designed to reduce adverse incidents, and whether the program
 26 is appropriately reporting incidents under this section.

27 (16) There shall be no monetary liability on the part
 28 of, and no cause of action for damages shall arise against,
 29 any risk manager, licensed under s. 395.10974, for the
 30 implementation and oversight of the internal risk management
 31 program in a facility licensed under this chapter or chapter

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1 390 as required by this section, for any act or proceeding
2 undertaken or performed within the scope of the functions of
3 such internal risk management program if the risk manager acts
4 without intentional fraud.

5 (17) A privilege against civil liability is hereby
6 granted to any licensed risk manager or licensed facility with
7 regard to information furnished pursuant to this chapter,
8 unless the licensed risk manager or facility acted in bad
9 faith or with malice in providing such information.

10 (18) If the agency, through its receipt of any reports
11 required under this section or through any investigation, has
12 a reasonable belief that conduct by a staff member or employee
13 of a licensed facility is grounds for disciplinary action by
14 the appropriate regulatory board, the agency shall report this
15 fact to such regulatory board.

16 (19) It shall be unlawful for any person to coerce,
17 intimidate, or preclude a risk manager from lawfully executing
18 his or her reporting obligations pursuant to this chapter.
19 Such unlawful action shall be subject to civil monetary
20 penalties not to exceed \$10,000 per violation.

21 Section 4. Section 395.3025, Florida Statutes, is
22 amended to read:

23 395.3025 Patient and personnel records; copies;
24 examination.--

25 (1) Any licensed facility shall, upon written request,
26 and only after discharge of the patient, furnish, in a timely
27 manner, without delays for legal review, to any person
28 admitted therein for care and treatment or treated thereat, or
29 to any such person's guardian, curator, or personal
30 representative, or in the absence of one of those persons, to
31 the next of kin of a decedent or the parent of a minor, or to

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1 anyone designated by such person in writing, a true and
2 correct copy of all patient records, including X rays, and
3 insurance information concerning such person, which records
4 are in the possession of the licensed facility, provided the
5 person requesting such records agrees to pay a charge. The
6 exclusive charge for copies of patient records may include
7 sales tax and actual postage, and, except for nonpaper records
8 that are subject to a charge not to exceed \$2, may not exceed
9 \$1 per page. A fee of up to \$1 may be charged for each year of
10 records requested. These charges shall apply to all records
11 furnished, whether directly from the facility or from a copy
12 service providing these services on behalf of the facility.
13 However, a patient whose records are copied or searched for
14 the purpose of continuing to receive medical care is not
15 required to pay a charge for copying or for the search. The
16 licensed facility shall further allow any such person to
17 examine the original records in its possession, or microforms
18 or other suitable reproductions of the records, upon such
19 reasonable terms as shall be imposed to assure that the
20 records will not be damaged, destroyed, or altered.

21 (2) This section does not apply to records maintained
22 at any licensed facility the primary function of which is to
23 provide psychiatric care to its patients, or to records of
24 treatment for any mental or emotional condition at any other
25 licensed facility which are governed by the provisions of s.
26 394.4615.

27 (3) This section does not apply to records of
28 substance abuse impaired persons, which are governed by s.
29 397.501.

30 (4) Patient records are confidential and must not be
31 disclosed without the consent of the person to whom they

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1 | pertain, but appropriate disclosure may be made without such
2 | consent to:

3 | (a) Licensed facility personnel and attending
4 | physicians for use in connection with the treatment of the
5 | patient.

6 | (b) Licensed facility personnel only for
7 | administrative purposes or risk management and quality
8 | assurance functions.

9 | (c) The agency, for purposes of health care cost
10 | containment.

11 | (d) In any civil or criminal action, unless otherwise
12 | prohibited by law, upon the issuance of a subpoena from a
13 | court of competent jurisdiction and proper notice by the party
14 | seeking such records to the patient or his or her legal
15 | representative.

16 | (e) The agency upon subpoena issued pursuant to s.
17 | 456.071, but the records obtained thereby must be used solely
18 | for the purpose of the agency and the appropriate professional
19 | board in its investigation, prosecution, and appeal of
20 | disciplinary proceedings. If the agency requests copies of the
21 | records, the facility shall charge no more than its actual
22 | copying costs, including reasonable staff time. The records
23 | must be sealed and must not be available to the public
24 | pursuant to s. 119.07(1) or any other statute providing access
25 | to records, nor may they be available to the public as part of
26 | the record of investigation for and prosecution in
27 | disciplinary proceedings made available to the public by the
28 | agency or the appropriate regulatory board. However, the
29 | agency must make available, upon written request by a
30 | practitioner against whom probable cause has been found, any
31 | such records that form the basis of the determination of

1 probable cause.

2 (f) The Department of Health or its agent, for the
3 purpose of establishing and maintaining a trauma registry and
4 for the purpose of ensuring that hospitals and trauma centers
5 are in compliance with the standards and rules established
6 under ss. 395.401, 395.4015, 395.4025, 395.404, 395.4045, and
7 395.405, and for the purpose of monitoring patient outcome at
8 hospitals and trauma centers that provide trauma care
9 services.

10 (g) The Department of Children and Family Services or
11 its agent, for the purpose of investigations of cases of
12 abuse, neglect, or exploitation of children or vulnerable
13 adults.

14 (h) The State Long-Term Care Ombudsman Council and the
15 local long-term care ombudsman councils, with respect to the
16 records of a patient who has been admitted from a nursing home
17 or long-term care facility, when the councils are conducting
18 an investigation involving the patient as authorized under
19 part II of chapter 400, upon presentation of identification as
20 a council member by the person making the request. Disclosure
21 under this paragraph shall only be made after a competent
22 patient or the patient's representative has been advised that
23 disclosure may be made and the patient has not objected.

24 (i) A local trauma agency or a regional trauma agency
25 that performs quality assurance activities, or a panel or
26 committee assembled to assist a local trauma agency or a
27 regional trauma agency in performing quality assurance
28 activities. Patient records obtained under this paragraph are
29 confidential and exempt from s. 119.07(1) and s. 24(a), Art. I
30 of the State Constitution.

31 (j) Organ procurement organizations, tissue banks, and

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1 eye banks required to conduct death records reviews pursuant
2 to s. 395.2050.

3 (k) The Medicaid Fraud Control Unit in the Department
4 of Legal Affairs pursuant to s. 409.920.

5 (l) The Department of Financial Services, or an agent,
6 employee, or independent contractor of the department who is
7 auditing for unclaimed property pursuant to chapter 717.

8 (m) A patient who has sought, is seeking, is
9 undergoing, or has undergone care or treatment in a health
10 care facility licensed under this chapter and who requests
11 access to records of adverse medical incidents under s.
12 395.3016, so long as the facility does not disclose the
13 identify of a patient who is the subject of such records.

14 (5) The Department of Health may examine patient
15 records of a licensed facility, whether held by the facility
16 or the Agency for Health Care Administration, for the purpose
17 of epidemiological investigations. The unauthorized release of
18 information by agents of the department which would identify
19 an individual patient is a misdemeanor of the first degree,
20 punishable as provided in s. 775.082 or s. 775.083.

21 (6) Patient records shall contain information required
22 for completion of birth, death, and fetal death certificates.

23 (7)(a) If the content of any record of patient
24 treatment is provided under this section, the recipient, if
25 other than the patient or the patient's representative, may
26 use such information only for the purpose provided and may not
27 further disclose any information to any other person or
28 entity, unless expressly permitted by the written consent of
29 the patient. A general authorization for the release of
30 medical information is not sufficient for this purpose. Except
31 for those records of adverse medical incidents which must be

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1 released under s. 25, Art. X of the State Constitution and s.
2 395.3016, the content of such patient treatment record is
3 confidential and exempt from the provisions of s. 119.07(1)
4 and s. 24(a), Art. I of the State Constitution.

5 (b) Absent a specific written release or authorization
6 permitting utilization of patient information for solicitation
7 or marketing the sale of goods or services, any use of that
8 information for those purposes is prohibited.

9 (8) Patient records at hospitals and ambulatory
10 surgical centers are exempt from disclosure under s.
11 119.07(1), except as provided by subsections (1)-(7) and s.
12 395.3016(1)-(5).

13 (9) A licensed facility may prescribe the content and
14 custody of limited-access records which the facility may
15 maintain on its employees. Such records shall be limited to
16 information regarding evaluations of employee performance,
17 including records forming the basis for evaluation and
18 subsequent actions, and shall be open to inspection only by
19 the employee and by officials of the facility who are
20 responsible for the supervision of the employee. The custodian
21 of limited-access employee records shall release information
22 from such records to other employers or only upon
23 authorization in writing from the employee or upon order of a
24 court of competent jurisdiction. Any facility releasing such
25 records pursuant to this part shall be considered to be acting
26 in good faith and may not be held liable for information
27 contained in such records, absent a showing that the facility
28 maliciously falsified such records. Except for those records
29 of adverse medical incidents which must be released under s.
30 25, Art. X of the State Constitution and s. 395.3016, such
31 limited-access employee records are exempt from the provisions

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1 of s. 119.07(1) for a period of 5 years following ~~from~~ the
2 date such records are designated limited-access records.

3 (10) The home addresses, telephone numbers, and
4 photographs of employees of any licensed facility who provide
5 direct patient care or security services; the home addresses,
6 telephone numbers, and places of employment of the spouses and
7 children of such persons; and the names and locations of
8 schools and day care facilities attended by the children of
9 such persons are confidential and exempt from s. 119.07(1) and
10 s. 24(a), Art. I of the State Constitution. However, any state
11 or federal agency that is authorized to have access to such
12 information by any provision of law shall be granted such
13 access in the furtherance of its statutory duties,
14 notwithstanding the provisions of this subsection. The
15 Department of Financial Services, or an agent, employee, or
16 independent contractor of the department who is auditing for
17 unclaimed property pursuant to chapter 717, shall be granted
18 access to the name, address, and social security number of any
19 employee owed unclaimed property.

20 (11) The home addresses, telephone numbers, and
21 photographs of employees of any licensed facility who have a
22 reasonable belief, based upon specific circumstances that have
23 been reported in accordance with the procedure adopted by the
24 facility, that release of the information may be used to
25 threaten, intimidate, harass, inflict violence upon, or
26 defraud the employee or any member of the employee's family;
27 the home addresses, telephone numbers, and places of
28 employment of the spouses and children of such persons; and
29 the names and locations of schools and day care facilities
30 attended by the children of such persons are confidential and
31 exempt from s. 119.07(1) and s. 24(a), Art. I of the State

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1 Constitution. However, any state or federal agency that is
2 authorized to have access to such information by any provision
3 of law shall be granted such access in the furtherance of its
4 statutory duties, notwithstanding the provisions of this
5 subsection. The licensed facility shall maintain the
6 confidentiality of the personal information only if the
7 employee submits a written request for confidentiality to the
8 licensed facility.

9 Section 5. Section 395.51, Florida Statutes, is
10 amended to read:

11 395.51 Confidentiality and quality assurance
12 activities of trauma agencies.--

13 (1) All information which is confidential by operation
14 of law and which is obtained by a local or regional trauma
15 agency or a panel or committee assembled by a local or
16 regional trauma agency pursuant to s. 395.50, shall retain its
17 confidential status and be exempt from the provisions of s.
18 119.07(1) and s. 24(a), Art. I of the State Constitution.

19 (2) Except for a hospital's records of adverse medical
20 incidents which must be released under s. 25, Art. X of the
21 State Constitution and s. 395.3016, all information that ~~which~~
22 is confidential by operation of law and ~~which~~ is obtained by a
23 hospital or emergency medical services provider from a local
24 or regional trauma agency or a panel or committee assembled by
25 a local or regional trauma agency pursuant to s. 395.50, shall
26 retain its confidential status and is ~~shall be~~ exempt from the
27 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
28 Constitution.

29 (3) Portions of meetings, proceedings, reports, and
30 records of a local or regional trauma agency, or a panel or
31 committee assembled by a local or regional trauma agency

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1 pursuant to this chapter, which relate solely to patient care
2 quality assurance are confidential and exempt from the
3 provisions of s. 286.011, and s. 24(b), Art. I of the State
4 Constitution and are confidential and exempt from the
5 provisions of s. 119.07(1) and s. 24(a), Art. I of the State
6 Constitution, respectively. Patient care quality assurance,
7 for the purpose of this section, shall include consideration
8 of specific persons, cases, incidents relevant to the
9 performance of quality control, and system evaluation.

10 Section 6. Section 456.057, Florida Statutes, is
11 amended to read:

12 456.057 Ownership and control of patient records;
13 report or copies of records to be furnished.--

14 (1) As used in this section, the term "records owner"
15 means any health care practitioner who generates a medical
16 record after making a physical or mental examination of, or
17 administering treatment or dispensing legend drugs to, any
18 person; any health care practitioner to whom records are
19 transferred by a previous records owner; or any health care
20 practitioner's employer, including, but not limited to, group
21 practices and staff-model health maintenance organizations,
22 provided the employment contract or agreement between the
23 employer and the health care practitioner designates the
24 employer as the records owner.

25 (2) As used in this section, the terms "records
26 owner," "health care practitioner," and "health care
27 practitioner's employer" do not include any of the following
28 persons or entities; furthermore, the following persons or
29 entities are not authorized to acquire or own medical records,
30 but are authorized under the confidentiality and disclosure
31 requirements of this section to maintain those documents

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1 required by the part or chapter under which they are licensed
2 or regulated:

3 (a) Certified nursing assistants regulated under part
4 II of chapter 464.

5 (b) Pharmacists and pharmacies licensed under chapter
6 465.

7 (c) Dental hygienists licensed under s. 466.023.

8 (d) Nursing home administrators licensed under part II
9 of chapter 468.

10 (e) Respiratory therapists regulated under part V of
11 chapter 468.

12 (f) Athletic trainers licensed under part XIII of
13 chapter 468.

14 (g) Electrologists licensed under chapter 478.

15 (h) Clinical laboratory personnel licensed under part
16 III of chapter 483.

17 (i) Medical physicists licensed under part IV of
18 chapter 483.

19 (j) Opticians and optical establishments licensed or
20 permitted under part I of chapter 484.

21 (k) Persons or entities practicing under s.
22 627.736(7).

23 (3) This section does not apply to facilities licensed
24 under chapter 395.

25 (4) Any health care practitioner licensed by the
26 department or a board within the department who makes a
27 physical or mental examination of, or administers treatment or
28 dispenses legend drugs to, any person shall, upon request of
29 such person or the person's legal representative, furnish, in
30 a timely manner, without delays for legal review, copies of
31 all reports and records relating to such examination or

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1 treatment, including X rays and insurance information.
2 However, when a patient's psychiatric, chapter 490
3 psychological, or chapter 491 psychotherapeutic records are
4 requested by the patient or the patient's legal
5 representative, the health care practitioner may provide a
6 report of examination and treatment in lieu of copies of
7 records. Upon a patient's written request, complete copies of
8 the patient's psychiatric records shall be provided directly
9 to a subsequent treating psychiatrist. The furnishing of such
10 report or copies shall not be conditioned upon payment of a
11 fee for services rendered.

12 (5) (a) Except as otherwise provided in this section
13 and in s. 440.13(4)(c), such records may not be furnished to,
14 and the medical condition of a patient may not be discussed
15 with, any person other than the patient or the patient's legal
16 representative or other health care practitioners and
17 providers involved in the care or treatment of the patient,
18 except upon written authorization of the patient. However,
19 such records may be furnished without written authorization
20 under the following circumstances:

21 1. To any person, firm, or corporation that has
22 procured or furnished such examination or treatment with the
23 patient's consent.

24 2. When compulsory physical examination is made
25 pursuant to Rule 1.360, Florida Rules of Civil Procedure, in
26 which case copies of the medical records shall be furnished to
27 both the defendant and the plaintiff.

28 3. In any civil or criminal action, unless otherwise
29 prohibited by law, upon the issuance of a subpoena from a
30 court of competent jurisdiction and proper notice to the
31 patient or the patient's legal representative by the party

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1 seeking such records.

2 4. For statistical and scientific research, provided
3 the information is abstracted in such a way as to protect the
4 identity of the patient or provided written permission is
5 received from the patient or the patient's legal
6 representative.

7 5. When a patient requests those records of adverse
8 medical incidents which must be released under s. 25, Art. X
9 of the State Constitution and s. 458.352, s. 459.027, or s.
10 461.019.

11 (b) Absent a specific written release or authorization
12 permitting utilization of patient information for solicitation
13 or marketing the sale of goods or services, any use of that
14 information for those purposes is prohibited.

15 (6) Except in a medical negligence action or
16 administrative proceeding when a health care practitioner or
17 provider is or reasonably expects to be named as a defendant
18 and except for those records of adverse medical incidents
19 which must be released under s. 25, Art. X of the State
20 Constitution and s. 458.352, s. 459.027, or s. 461.019,
21 information disclosed to a health care practitioner by a
22 patient in the course of the care and treatment of such
23 patient is confidential and may be disclosed only to other
24 health care practitioners and providers involved in the care
25 or treatment of the patient, or if permitted by written
26 authorization from the patient or compelled by subpoena at a
27 deposition, evidentiary hearing, or trial for which proper
28 notice has been given.

29 (7)(a)1. The department may obtain patient records
30 pursuant to a subpoena without written authorization from the
31 patient if the department and the probable cause panel of the

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1 appropriate board, if any, find reasonable cause to believe
2 that a health care practitioner has excessively or
3 inappropriately prescribed any controlled substance specified
4 in chapter 893 in violation of this chapter or any
5 professional practice act or that a health care practitioner
6 has practiced his or her profession below that level of care,
7 skill, and treatment required as defined by this chapter or
8 any professional practice act and also find that appropriate,
9 reasonable attempts were made to obtain a patient release.

10 2. The department may obtain patient records and
11 insurance information pursuant to a subpoena without written
12 authorization from the patient if the department and the
13 probable cause panel of the appropriate board, if any, find
14 reasonable cause to believe that a health care practitioner
15 has provided inadequate medical care based on termination of
16 insurance and also find that appropriate, reasonable attempts
17 were made to obtain a patient release.

18 3. The department may obtain patient records, billing
19 records, insurance information, provider contracts, and all
20 attachments thereto pursuant to a subpoena without written
21 authorization from the patient if the department and probable
22 cause panel of the appropriate board, if any, find reasonable
23 cause to believe that a health care practitioner has submitted
24 a claim, statement, or bill using a billing code that would
25 result in payment greater in amount than would be paid using a
26 billing code that accurately describes the services performed,
27 requested payment for services that were not performed by that
28 health care practitioner, used information derived from a
29 written report of an automobile accident generated pursuant to
30 chapter 316 to solicit or obtain patients personally or
31 through an agent regardless of whether the information is

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1 derived directly from the report or a summary of that report
2 or from another person, solicited patients fraudulently,
3 received a kickback as defined in s. 456.054, violated the
4 patient brokering provisions of s. 817.505, or presented or
5 caused to be presented a false or fraudulent insurance claim
6 within the meaning of s. 817.234(1)(a), and also find that,
7 within the meaning of s. 817.234(1)(a), patient authorization
8 cannot be obtained because the patient cannot be located or is
9 deceased, incapacitated, or suspected of being a participant
10 in the fraud or scheme, and if the subpoena is issued for
11 specific and relevant records.

12 4. Notwithstanding subparagraphs 1.-3., when the
13 department investigates a professional liability claim or
14 undertakes action pursuant to s. 456.049 or s. 627.912, the
15 department may obtain patient records pursuant to a subpoena
16 without written authorization from the patient if the patient
17 refuses to cooperate or if the department attempts to obtain a
18 patient release and the failure to obtain the patient records
19 would be detrimental to the investigation.

20 (b) Patient records, billing records, insurance
21 information, provider contracts, and all attachments thereto
22 obtained by the department pursuant to this subsection shall
23 be used solely for the purpose of the department and the
24 appropriate regulatory board in disciplinary proceedings. This
25 section does not limit the assertion of the
26 psychotherapist-patient privilege under s. 90.503 in regard to
27 records of treatment for mental or nervous disorders by a
28 medical practitioner licensed pursuant to chapter 458 or
29 chapter 459 who has primarily diagnosed and treated mental and
30 nervous disorders for a period of not less than 3 years,
31 inclusive of psychiatric residency. However, the health care

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1 practitioner shall release records of treatment for medical
2 conditions even if the health care practitioner has also
3 treated the patient for mental or nervous disorders. If the
4 department has found reasonable cause under this section and
5 the psychotherapist-patient privilege is asserted, the
6 department may petition the circuit court for an in camera
7 review of the records by expert medical practitioners
8 appointed by the court to determine if the records or any part
9 thereof are protected under the psychotherapist-patient
10 privilege.

11 (8) (a) All patient records obtained by the department
12 and any other documents maintained by the department which
13 identify the patient by name are confidential and exempt from
14 s. 119.07(1) and shall be used solely for the purpose of the
15 department and the appropriate regulatory board in its
16 investigation, prosecution, and appeal of disciplinary
17 proceedings. The records shall not be available to the public
18 as part of the record of investigation for and prosecution in
19 disciplinary proceedings made available to the public by the
20 department or the appropriate board.

21 (b) Notwithstanding paragraph (a), all patient records
22 obtained by the department and any other documents maintained
23 by the department which relate to a current or former Medicaid
24 recipient shall be provided to the Medicaid Fraud Control Unit
25 in the Department of Legal Affairs, upon request.

26 (9) All records owners shall develop and implement
27 policies, standards, and procedures to protect the
28 confidentiality and security of the medical record. Employees
29 of records owners shall be trained in these policies,
30 standards, and procedures.

31 (10) Records owners are responsible for maintaining a

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1 record of all disclosures of information contained in the
2 medical record to a third party, including the purpose of the
3 disclosure request. The record of disclosure may be
4 maintained in the medical record. The third party to whom
5 information is disclosed is prohibited from further disclosing
6 any information in the medical record without the expressed
7 written consent of the patient or the patient's legal
8 representative.

9 (11) Notwithstanding the provisions of s. 456.058,
10 records owners shall place an advertisement in the local
11 newspaper or notify patients, in writing, when they are
12 terminating practice, retiring, or relocating, and no longer
13 available to patients, and offer patients the opportunity to
14 obtain a copy of their medical record.

15 (12) Notwithstanding the provisions of s. 456.058,
16 records owners shall notify the appropriate board office when
17 they are terminating practice, retiring, or relocating, and no
18 longer available to patients, specifying who the new records
19 owner is and where medical records can be found.

20 (13) Whenever a records owner has turned records over
21 to a new records owner, the new records owner shall be
22 responsible for providing a copy of the complete medical
23 record, upon written request, of the patient or the patient's
24 legal representative.

25 (14) Licensees in violation of the provisions of this
26 section shall be disciplined by the appropriate licensing
27 authority.

28 (15) The Attorney General is authorized to enforce the
29 provisions of this section for records owners not otherwise
30 licensed by the state, through injunctive relief and fines not
31 to exceed \$5,000 per violation.

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1 (16) A health care practitioner or records owner
2 furnishing copies of reports or records or making the reports
3 or records available for digital scanning pursuant to this
4 section shall charge no more than the actual cost of copying,
5 including reasonable staff time, or the amount specified in
6 administrative rule by the appropriate board, or the
7 department when there is no board.

8 (17) Nothing in this section shall be construed to
9 limit health care practitioner consultations, as necessary.

10 (18) A records owner shall release to a health care
11 practitioner who, as an employee of the records owner,
12 previously provided treatment to a patient, those records that
13 the health care practitioner actually created or generated
14 when the health care practitioner treated the patient.
15 Records released pursuant to this subsection shall be released
16 only upon written request of the health care practitioner and
17 shall be limited to the notes, plans of care, and orders and
18 summaries that were actually generated by the health care
19 practitioner requesting the record.

20 (19) The board, or department when there is no board,
21 may temporarily or permanently appoint a person or entity as a
22 custodian of medical records in the event of the death of a
23 practitioner, the mental or physical incapacitation of the
24 practitioner, or the abandonment of medical records by a
25 practitioner. The custodian appointed shall comply with all
26 provisions of this section, including the release of patient
27 records.

28 Section 7. Section 458.352, Florida Statutes, is
29 created to read:

30 458.352 Patients' right to know about adverse medical
31 incidents.--

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1 (1) For purposes of implementing s. 25, Art. X of the
2 State Constitution, a patient who has sought, is seeking, is
3 undergoing, or has undergone care or treatment by a physician
4 licensed under this chapter has a right to have access to any
5 records made or received in the course of business by the
6 physician relating to any adverse medical incident. In
7 providing such access, the identity of any patient involved in
8 an incident may not be disclosed, and the privacy restrictions
9 imposed by federal law must be maintained. This section
10 applies only to records of an adverse medical incident that
11 occurs on or after November 2, 2004.

12 (2) As used in this section, the phrase "adverse
13 medical incident" means medical negligence, intentional
14 misconduct, and any other act, neglect, or default of a health
15 care facility licensed under chapter 395 or health care
16 provider as defined in s. 381.026 which caused or could have
17 caused injury to or death of a patient, including, but not
18 limited to, those incidents that are required by state or
19 federal law to be reported to any governmental agency or body,
20 and incidents that are reported to or reviewed by any health
21 care facility peer review, risk management, quality assurance,
22 credentials, or similar committee, or any representative of
23 any such committees.

24 (3) In addition to any other procedure for producing
25 such records provided by general law, a physician must make
26 the records available for inspection and copying upon formal
27 or informal request by the patient or a representative of the
28 patient, provided that current records which have been made
29 publicly available by publication or on the Internet may be
30 "provided" by reference to the location at which the records
31 are publicly available. The records must be made available in

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1 a timely manner without delay for legal review. The records
2 must be made available at reasonable times of day and days of
3 the week within the physician's business hours. The charge for
4 copies of the records must be no more than the actual cost of
5 copying, including reasonable staff time, and the charges may
6 not exceed \$1 per page for the first 25 pages and 25 cents per
7 page for each page in excess of 25 pages. These charges apply
8 to all records furnished, whether directly from the physician
9 or from a copy service providing these services on behalf of
10 the physician.

11 (4) The board may levy a fine of up to \$500 for a
12 nonwillful violation and up to \$1,000 for a willful violation
13 against a physician who fails to provide access to the records
14 or to provide copies if requested.

15 (5) The board may levy a fine of up to \$500 for a
16 nonwillful violation and up to \$1,000 for a willful violation
17 against a physician who discloses the identity of a patient
18 involved in an incident in the provision of records.

19 Section 8. Section 459.027, Florida Statutes, is
20 created to read:

21 459.027 Patients' right to know about adverse medical
22 incidents.--

23 (1) For purposes of implementing s. 25, Art. X of the
24 State Constitution, a patient who has sought, is seeking, is
25 undergoing, or has undergone care or treatment by an
26 osteopathic physician licensed under this chapter has a right
27 to have access to any records made or received in the course
28 of business by the osteopathic physician relating to any
29 adverse medical incident. In providing such access, the
30 identity of any patient involved in an incident may not be
31 disclosed, and the privacy restrictions imposed by federal law

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1 must be maintained. This section applies only to records of an
2 adverse medical incident that occurs on or after November 2,
3 2004.

4 (2) As used in this section, the phrase "adverse
5 medical incident" means medical neqliqence, intentional
6 misconduct, and any other act, neglect, or default of a health
7 care facility licensed under chapter 395 or health care
8 provider as defined in s. 381.026 which caused or could have
9 caused injury to or death of a patient, including, but not
10 limited to, those incidents that are required by state or
11 federal law to be reported to any governmental agency or body,
12 and incidents that are reported to or reviewed by any health
13 care facility peer review, risk management, quality assurance,
14 credentials, or similar committee, or any representative of
15 any such committees.

16 (3) In addition to any other procedure for producing
17 such records provided by general law, an osteopathic physician
18 must make the records available for inspection and copying
19 upon formal or informal request by the patient or a
20 representative of the patient, provided that current records
21 which have been made publicly available by publication or on
22 the Internet may be "provided" by reference to the location at
23 which the records are publicly available. The records must be
24 made available in a timely manner without delay for legal
25 review. The records must be made available at reasonable times
26 of day and days of the week within the physician's business
27 hours. The charge for copies of the records must be no more
28 than the actual cost of copying, including reasonable staff
29 time, and the charges may not exceed \$1 per page for the first
30 25 pages and 25 cents per page for each page in excess of 25
31 pages. These charges apply to all records furnished, whether

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1 directly from the physician or from a copy service providing
2 these services on behalf of the physician.

3 (4) The board may levy a fine of up to \$500 for a
4 nonwillful violation and up to \$1,000 for a willful violation
5 against an osteopathic physician who fails to provide access
6 to the records or to provide copies if requested.

7 (5) The board may levy a fine of up to \$500 for a
8 nonwillful violation and up to \$1,000 for a willful violation
9 against an osteopathic physician who discloses the identity of
10 a patient involved in an incident in the provision of records.

11 Section 9. Section 461.019, Florida Statutes, is
12 created to read:

13 461.019 Patients' right to know about adverse medical
14 incidents.--

15 (1) For purposes of implementing s. 25, Art. X of the
16 State Constitution, a patient who has sought, is seeking, is
17 undergoing, or has undergone care or treatment by a podiatric
18 physician licensed under this chapter has a right to have
19 access to any records made or received in the course of
20 business by the podiatric physician relating to any adverse
21 medical incident. In providing such access, the identity of
22 any patient involved in an incident may not be disclosed, and
23 the privacy restrictions imposed by federal law must be
24 maintained. This section applies only to records of an adverse
25 medical incident that occurs on or after November 2, 2004.

26 (2) As used in this section, the phrase "adverse
27 medical incident" means medical negligence, intentional
28 misconduct, and any other act, neglect, or default of a health
29 care facility licensed under chapter 395 or health care
30 provider as defined in s. 381.026 which caused or could have
31 caused injury to or death of a patient, including, but not

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1 limited to, those incidents that are required by state or
2 federal law to be reported to any governmental agency or body,
3 and incidents that are reported to or reviewed by any health
4 care facility peer review, risk management, quality assurance,
5 credentials, or similar committee, or any representative of
6 any such committees.

7 (3) In addition to any other procedure for producing
8 such records provided by general law, a podiatric physician
9 must make the records available for inspection and copying
10 upon formal or informal request by the patient or a
11 representative of the patient, provided that current records
12 which have been made publicly available by publication or on
13 the Internet may be "provided" by reference to the location at
14 which the records are publicly available. The records must be
15 made available in a timely manner without delay for legal
16 review. The records must be made available at reasonable times
17 of day and days of the week within the physician's business
18 hours. The charge for copies of the records must be no more
19 than the actual cost of copying, including reasonable staff
20 time, and the charges may not exceed \$1 per page for the first
21 25 pages and 25 cents per page for each page in excess of 25
22 pages. These charges apply to all records furnished, whether
23 directly from the physician or from a copy service providing
24 these services on behalf of the physician.

25 (4) The board may levy a fine of up to \$500 for a
26 nonwillful violation and up to \$1,000 for a willful violation
27 against a podiatric physician who fails to provide access to
28 the records or to provide copies if requested.

29 (5) The board may levy a fine of up to \$500 for a
30 nonwillful violation and up to \$1,000 for a willful violation
31 against a podiatric physician who discloses the identity of a

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1 patient involved in an incident in the provision of records.

2 Section 10. This act shall take effect upon becoming a
3 law.

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